**APPLICATION UNDER SECTION 146 OF C. P. C.**

APPLICATION TO EXECUTE A DECREE AGAINST THE LEGAL REPRESENTATIVES OF DECEASED JUDGMENT DEBTOR

IN THE COURT OF THE....................

Misc. Application.................... of.................. 19..........

Under Section 146 C. P. C.

in

Execution No........... of........... 19....................

A. B....................................................... Decree-Holder.

*versus*

C. D................................................. Judgment Debtors.

The Decree-holder most respectfully submits as under:

1. That the judgment debtor Shri.................... of the decree aforementioned died on.................... 19.................... and his property has come in the hands of his legal representatives, the Opposite Parties, being the sons of the original judgment debtor.

2. That it is expedient that the decree may be executed against the opposite parties, the legal representatives of the original judgment debtor.

3. That the Opposite Parties may be called for deposit of the decreetal amount in Court and satisfy the decree.

**PRAYER**

It is, therefore, most respectfully prayed that your Hon’our may be pleased to summon the opposite parties and order them to deposit the decreetal amount in Court.

Dated.................... 19............ Counsel for the Decree-Holders.

**CASE LAW**

**SCOPE OF THE SECTION**

This section is introduced in the Code with the object of facilitating the exercise of rights by persons in whom they came to be vested by devolution or assignment. Whether the application for addition of party under this section is filed earlier
or simultaneously, the list is then pending. The only legal order that can be legitimately passed in these circumstances would be to enquire into the application of the transferee and to dispose of the compromise petition thereafter. When after passing the decree and before filing of the appeal against it, the decree holder transfers his interest and the decree-holder, joined as a respondent dies during the pendency of the appeal, the transferee can under this section apply for substitution as a respondent in place of the person already joined as a respondent in place of the person already joined as a legal representative of the deceased decree-holder1.

There are various provisions in the Code prescribing or allowing the doing of an act for which time is fixed or granted by the Court. In all such cases the Court has powers under this Section to enlarge the time, even after expiration of the period originally fixed. The time granted by the Court for payment of costs, while setting aside an *ex-parte* decree, as a condition precedent, is not an act prescribed or allowed by the Code. The section does not apply to such a case. On the other hand, section 151 can however be invoked in such a case2.

**TRANSFEREE OF PRE-EMPTOR’S RIGHT CAN MAINTAIN APPLICATION FOR EXECUTION.**

A transferee of the pre-emptor’s right in the land which has vested in him by virtue of Order 20, Rule 14, Civil Procedure Code, on compliance of the requirement of payment of the purchase money by the specified date, can maintain an application for execution under Section 146, or Order 21, Rule 16 of the Code3.

**EXECUTION OF DOCUMENT OF ASSIGNMENT**

Where the document of assignment executed by the decree-holder recited that the assignee will have the capacity of decree-holder-assignee, the same leaves no doubt that the parties to the document were aware that certain rights in the property have accrued to the decree-holder and he was transferring those rights to the assignee. Therefore, the parties clearly intended to transfer decree-holders interest in the pre-emptional land to the assignee4.

1. Prahlad Misra v. Narasingha Mahapatra, I. L. R. (1965) Cut. 523: 32 Cut. L. T. 570.

2. Kanduri Sahu v. Nidhi Sahu, A.I.R. 1966 Orissa 44: l. L. R. (1965) cut. 506: 31 Cut. L. T. 757.

3. Bhoop v Matadin Bhardwaj, 1991 (1) C.C.C. 403 (S.C. ).

4. Bhoop v. Matadin Bhardwaj S/o Laxmi Chand, A.I.R. 1991 Supreme Court 373: 1990 (4) J. T. 594: 1990 Supp. (3) S.C. R. 410: 1991 (2) S.C.C. 128.